IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 353 of 2011 (O&M)
Date of Decision : 06.10.2015

Saliman and others ....Appellants

Versus

Daud and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ashish Gupta, Advocate
for the appellants.

Mr. Lalit Garg, Advocate
for respondent no. 3-Insurance Company.

SURINDER GUPTA, J.

This appeal has been filed by Saliman and other appellants seeking enhancement of compensation allowed by the Motor Accident Claims Tribunal, Nuh (later referred to as 'the Tribunal') for the death of Ayub (later referred to as 'the deceased') aged 45 years in a motor accident with Tractor bearing No. HR-28-8131 (later referred to as 'the offending vehicle'). Ayub was husband of Saliman-claimant no. 1, father of claimants no. 2 to 8 and son of claimant no. 9.

2. As per the claimants, on 20.03.2008 Ayub was coming from village Patakpur to village Piproli on motorcycle bearing registration no. HR-38A-7659, which was being driven by Sirajuddin, brother of the deceased. The offending vehicle came from Punhana side. It was being driven by Daud-respondent no. 1 in a rash and negligent manner. The offending vehicle came on the wrong side of road and hit the motorcycle resulting in injuries to riders on the motorcycle. The deceased was taken to Government hospital, Mandikhera but he breathed his last on the way to

hospital.

3. Respondent no. 3-United India Insurance Company Ltd. insurer of the offending vehicle in its written statement denied the accident.

4. As this appeal has been filed, seeking enhancement of compensation, detailed facts of the case relating to accident are not required to be discussed in detail.

5. The Tribunal recorded finding while deciding issue no. 1 that the accident had taken place due to rash and negligent driving of the offending vehicle by its driver i.e. respondent no. 1.

6. The deceased was 45 years of age. In the absence of any proof of income of deceased, he was taken as a labourer and his per month wages was assessed as ₹ 3000/- per month. Keeping in view his age, multiplier of 14 was applied after a deduction of $1/5^{th}$ of his salary towards his personal expenses. A sum of ₹ 10,000/- was allowed towards loss of consortium, ₹ 5000/- towards funeral expenses and ₹ 5000/- towards loss of estate while calculating the total amount of compensation as ₹ 4,23,200/-.

7. Learned counsel for the appellants has argued that the Tribunal has assessed monthly income of the deceased as ₹ 3000/-. Even the minimum wages fixed in the year 2009 of a labourer were around 3800/- per month. Even otherwise, it is a matter of common knowledge that a daily wage labourer was available in the year 2009 at the rate not less than ₹ 120/- to ₹ 160/- per day. As per observations in cases of ***Rajesh and others*** ***vs.*** ***Rajbir Singh and others*, 2013 (9) SCC 54** and

<u>Munna Lal Jain and others</u> vs. <u>Vipin Kumar Sharma and others</u>, 2015 (3) RCR(Civil) 447, the claimants are also entitled to addition of 30% of the income of deceased towards his future prospects, ₹ 1 lac towards consortium, ₹ 25,000/- towards funeral expenses, ₹ 1 lac towards loss of love and affection and guidance to each kid and ₹ 50,000/- towards loss of estate.

8. Learned counsel for respondent no. 3-Insurance Company, Mr. Lalit Garg, Advocate, has argued that the Tribunal has rightly taken the income of deceased as ₹ 3000/- per month in the absence of any documentary proof. The multiplier of 14 has been applied keeping in view the age of deceased. The matter regarding allowing of compensation towards future prospects as decided by the Apex Court in the case of ***Rajesh (supra)*** is pending consideration before the larger Bench of the Apex Court in case ***<u>National Insurance Company Limited</u> vs. <u>Pushpa and others</u>, Appeal (C) No.8058 of 2014 decided on 02.07.2014 (MANU/SC/1246/2014)***. Allowing of compensation for the loss of consortium, loss of estate, funeral expenses etc. is within the discretion of Tribunal and has been rightly allowed in this case.

9. The points which arise for consideration in this appeal are enumerated as follows:-

(i) Whether the Tribunal has rightly assessed monthly income of the deceased as ₹ 3000/-?

(ii) Whether the claimants are entitled to addition in the income of deceased towards future prospects? If so, to what extent?

(iii) Whether the compensation allowed by the Tribunal under conventional heads like loss of consortium, loss of estate, funeral expenses etc.

is adequate and appropriate?

10. The Tribunal has taken the income of the deceased considering him to be a labourer as ₹ 3000/- per month. The minimum wages for the unskilled labourer in the State of Haryana in the year 2009 was ₹ 3840/-. It is a matter of common knowledge that even a daily wage labourer was earning somewhere more than ₹ 120/- per day at that point of time. Keeping in view the above facts, it will be appropriate to take monthly income of the deceased as ₹ 3840/-.

11. The deceased was 45 years of age at the time of his death. In the recent judgment dated 15.05.2015 in case of ***Munna Lal Jain (supra),*** a three Judges Bench of Hon'ble Apex Court allowed future prospects in the case of self-employed persons following the observations made in case of ***Rajesh (supra)***. As the view taken in case of ***Rajesh (supra)*** has been followed by the Hon'ble Apex Court in ***Munna Lal Jain (supra)***, the claimants are also entitled to 30% addition in the income of deceased towards future prospects.

12. As per the ratio of judgment in the case of ***Rajesh (supra)***, for the loss of care and guidance to minor children and funeral expenses, compensation of ₹3.5 lacs and ₹25,000/- respectively are allowed. The compensation of ₹3,50,000/- towards loss of care and guidance to minors has been allowed as the deceased has left behind seven children. The claimants are entitled to compensation of ₹1 lac towards loss of consortium for the wife of deceased and ₹50,000/- for the loss of estate. Taking into account the above parameters, the compensation of the

claimants works out to be as follows:-

Sl.No.	***Heads***	***Calculation***
(i)	Salary	₹3840 per month
(ii)	30% of (i) above to be added as future prospects	(₹3840+ ₹1152)= (₹ 4992 per month)
(iii)	1/5th of (ii) deducted as personal expenses of the deceased	(₹4992 - ₹1000)= ₹3992 per month
(iv)	Compensation after multiplier of 14 is applied	(₹3992X12X14)= ₹670656
(v)	Loss of consortium	₹100000
(vi)	Loss of care and guidance for minor children	₹350000
(vii)	Loss of estate	₹50000
(viii)	Funeral expenses	₹25000
Total		₹1195656

13. The appeal is accepted. The award of the Tribunal is modified and the appellants-claimants are allowed compensation of ₹ 11,95,656/- for the death of Ayub. The above amount will carry interest 7.5% per annum from the date of filing of the petition till actual realization. The amount of enhanced compensation shall be shared equally by the claimants. The share of minor Irshad, Irfan and Rehana appellants No. 6 to 8, who as per their ages given at the time of filing of the petition are still minor, will be deposited in some nationalized bank as fixed deposit till the period they attain majority. It is, however, made clear that the bank may take the documents regarding the age of the minor as required at the time of deposit of the amount and the minor shall not be asked to bring the fresh order from the Tribunal to get the payment of the amount deposited in her name after the date of attaining majority. The above direction has been issued to save the claimants from unnecessary harassment

caused due to directions the bank usually give to such depositor to bring the order of the Tribunal to get the payment even after attaining the age of majority. The claimants shall also be entitled to costs of this appeal. The counsel fee is assessed ₹ 20,000/-.

October 06, 2015 **(SURINDER GUPTA)**
jk **JUDGE**